

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PENDLETON DIVISION

CERVANTES-AVILA SILVESTRE,

Petitioner,

v.

BRAD CAIN,

Respondent.

No. 2:16-cv-02342-JE

OPINION AND ORDER

MOSMAN, J.,

On July 17, 2018, Magistrate Judge John Jelderks issued his Findings and Recommendation (F&R) [45], recommending that the Petitioner's Petition for Writ of Habeas Corpus [2] should be denied. Petitioner objected [47] and the Respondent responded [48].

DISCUSSION

The magistrate judge makes only recommendations to the court, to which any party may file written objections. The court is not bound by the recommendations of the magistrate judge, but retains responsibility for making the final determination. The court is generally required to make a de novo determination regarding those portions of the report or specified findings or recommendation as to which an objection is made. 28 U.S.C. § 636(b)(1)(C). However, the court is not required to review, de novo or under any other standard, the factual or legal conclusions of

the magistrate judge as to those portions of the F&R to which no objections are addressed. *See Thomas v. Arn*, 474 U.S. 140, 149 (1985); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003). While the level of scrutiny under which I am required to review the F&R depends on whether or not objections have been filed, in either case, I am free to accept, reject, or modify any part of the F&R. 28 U.S.C. § 636(b)(1)(C).

Upon review, I agree with Judge Jelderks's recommendation and I ADOPT the F&R [45] in full as my own opinion. The decision is AFFIRMED. I agree with Judge Jelderks that petitioner has not made a substantial showing of the denial of a constitutional right pursuant to 28 U.S.C. § 2253(c)(2), and thus I DECLINE to issue a Certificate of Appealability.

IT IS SO ORDERED.

DATED this 11 day of September, 2018.

/s/ Michael W. Mosman
MICHAEL W. MOSMAN
Chief United States District Judge